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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 PAUL SCOTT,

11 Plaintiff,

12 v.

13 CALEB CARR, *et al.*,

14 Defendants.

Case No. C20-236-RSM

ORDER GRANTING IN PART PARTIES'  
STIPULATED MOTION TO SEAL

15  
16 **I. INTRODUCTION**

17 This matter comes before the Court on parties' Stipulated Motion to Seal. Dkt. #62. The  
18 motion addresses a document designated as "confidential" by Defendants Caleb Carr and Vita  
19 Inclinata Technologies, Inc. ("Vita") filed in support of Plaintiff Paul Scott's motion to compel.  
20 *See* Dkt. #58-7. For the reasons set forth below, the Court GRANTS IN PART parties' stipulated  
21 motion to seal.

22 **II. BACKGROUND**

23 Parties request that the Court enter an order to seal Dkt. #58-7, which contains excerpts  
from a transcript of a March 11, 2021 deposition of Derek Sikora. Plaintiff filed Dkt. #58-7 as

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1 an exhibit to a declaration in support of Plaintiff’s Motion to Compel, Dkt. #58. At the time of  
2 filing the declaration, counsel for Plaintiff “was not aware that any portions of Mr. Sikora’s  
3 deposition or transcript had been designated ‘Confidential’ pursuant to the Stipulated Protective  
4 Order . . . .” Dkt. #62 at 1-2. Once Plaintiff’s counsel was notified that Dkt. #58-7 included  
5 material designated as “Confidential” under the Protective Order, parties met and conferred and  
6 filed the instant stipulated motion to seal. *Id.* at 2.

### 7 III. DISCUSSION

8 “There is a strong presumption of public access to the court’s files.” Local Rules W.D.  
9 Wash. LCR 5(g). However, for sealed discovery documents attached to non-dispositive motions,  
10 the Ninth Circuit has found that this strong presumption is rebutted given that such documents  
11 are often “unrelated, or only tangentially related, to the underlying cause of action.” *Kamakana*  
12 *v. City & County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (quoting *Phillips v. General*  
13 *Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)) (internal quotations omitted). Accordingly,  
14 a “good cause” showing under Rule 26(c) may suffice to keep under seal documents attached to  
15 non-dispositive motions. *Id.* Rule 26, which gives district courts flexibility in balancing and  
16 protecting the interests of private parties, states that “good cause” is shown where forbidding  
17 disclosure or discovery would “protect a party or person from annoyance, embarrassment,  
18 oppression, or undue burden or expense . . . .” Fed. R. Civ. P. 26(c).

19 The Court’s Local Rules explicitly instruct parties to present legal and evidentiary support  
20 in a motion to seal. Normally that motion must include “a specific statement of the applicable  
21 legal standard and the reasons for keeping a document under seal, with evidentiary support from  
22 declarations where necessary.” Local Rules W.D. Wash. LCR 5(g)(3)(B). However:

23 Where parties have entered a litigation agreement or stipulated  
protective order (see LCR 26(c)(2)) governing the exchange in

1 discovery of documents that a party deems confidential, a party  
2 wishing to file a confidential document it obtained from another  
3 party in discovery may file a motion to seal but need not satisfy  
4 subpart (3)(B) above. Instead, the party who designated the  
5 document confidential must satisfy subpart (3)(B) in its response to  
6 the motion to seal or in a stipulated motion.

7 LCR 5(g)(3). In this case, the protective order stipulated and agreed to by the parties on June 30,  
8 2020 explicitly states that “Local Civil Rule 5(g) sets forth the procedures that must be followed  
9 and the standards that will be applied when a party seeks permission from the court to file material  
10 under seal.” Dkt. #42 at 5.

11 Plaintiff disagrees that Dkt. #58-7 should be treated as confidential under the Protective  
12 Order because (1) the designations were made 30 days after receipt of the deposition transcript,  
13 and not within the 15 days provided for in the Protective Order; (2) and the designated testimony  
14 does not appear on its face to contain proprietary or commercially sensitive information. Dkt.  
15 #62 at 2. Defendants argue that the “confidential” designation to the transcript excerpts was  
16 timely corrected on April 22, 2021. Defendants also argue that the transcript excerpts are  
17 properly designated “confidential” since they contain stockholder information and sensitive  
18 financial information, and because their public disclosure risks financial and reputational harm  
19 to Vita and its shareholders. *Id.* at 2-3. Defendants also contend that less restrictive alternatives  
20 are no longer feasible given that the transcript has already been filed. *Id.* at 3.

21 As an initial matter, the Court finds that Defendants timely corrected their inadvertent  
22 failure to designate the transcript excerpt as “confidential.” Although paragraph 5.2 of the  
23 Protective Order requires parties to designate material within 15 days after receiving the  
deposition transcript, Dkt. #42 at 6, paragraph 5.3 provides that “[i]f timely corrected, an  
inadvertent failure to designate qualified information or items does not, standing alone, waive  
the designating party’s right to secure protection under this agreement for such material.” Dkt.

1 #42 at 7. Here, Defendants corrected their designation within 15 days after the designation period  
2 under the Protective Order elapsed. Accordingly, they have not waived their right to designate  
3 the material confidential.

4 Turning to the substance of the sealed document, Defendants have demonstrated good  
5 cause to keep the document under seal. Portions of the transcript contain sensitive information  
6 regarding Vita's internal operations, business plans, and stock holdings that may cause  
7 competitive and/or reputational damage to individuals or to Vita if publicly disclosed. However,  
8 given that only certain portions of the transcript contain the sensitive information, the Court is  
9 not persuaded that sealing the document in its entirety is appropriate. *See* LCR 5(g)(3)(B)(iii)  
10 (party seeking to maintain document under seal must explain why less restrictive alternative was  
11 not sufficient). The fact that the document was initially filed under seal does not preclude  
12 Plaintiff from publicly filing the transcript excerpts with redactions of sensitive material. For  
13 that reason, the Court GRANTS IN PART parties' stipulated motion to seal. Within **fourteen**  
14 **(14) days** from the date of this Order, Plaintiff shall publicly re-file the declaration exhibit, Dkt.  
15 #58-7, with redactions of sensitive financial and stockholder information.


#### 16 IV. CONCLUSION

17 Having reviewed the relevant briefing, the declarations and exhibits attached thereto, and  
18 the remainder of the record, the Court hereby finds and ORDERS that parties' Stipulated Motion  
19 to Seal, Dkt. #62, is GRANTED IN PART. Within **fourteen (14) days** from the date of this  
20 Order, Plaintiff shall publicly re-file the exhibit, Dkt. #58-7, with redactions of sensitive financial  
21 and stockholder information.

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1 DATED this 13<sup>th</sup> day of May, 2021.

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4 RICARDO S. MARTINEZ  
5 CHIEF UNITED STATES DISTRICT JUDGE  
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